

Atty. Dkt. No.: P58317US2
Serial No.: 08/865,044

The products produced in accordance with the working examples of McCrea are "a flowable semi-solid suitable for use as a roll-on antiperspirant product" (McCrea, column 17, lines 46-49) in Example 1. Examples 2-8 are also drawn to roll-on antiperspirant. Example 9 is drawn to a semi-solid sun screen product" (McCrea, column 21, line 60). There is no mention, anywhere, of using the composition in spraying onto the skin.

Thus, the present situation follows the fact pattern in the *De Lajarte* decision. That is, in the present case there is total absence of evidence in the record to indicate that" the composition disclosed in McCrea "would be expected to have desirable" aerosol-spraying "properties" and, therefore, there is no "justification for placing the burden on Applicant" to determine whether the composition disclosed in McCrea would adversely affect the basic and novel characteristics of the instant invention. *De Lajarte supra*. Therefore, in accordance with the holding in *De Lajarte* the rejection for alleged obviousness based on McCrea cannot be maintained.

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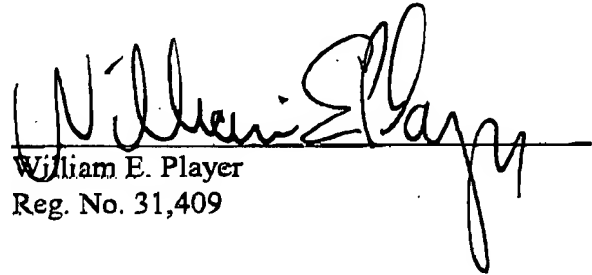
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Favorable action is requested.

Respectfully submitted,

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